

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

KELLI W.,

Claimant,

and

INLAND REGIONAL CENTER,

Service Agency.

OAH Case No. L 2006030146

DECISION

Administrative Law Judge Greer D. Knopf, State of California, Office of Administrative Hearings, heard this matter in San Bernardino, California on October 17 and November 28, 2006.

Deborah Crudup, Program Manager, Fair Hearings, Inland Regional Center appeared on behalf of the service agency, Inland Regional Center.

Cynthia J. Billey, staff attorney, Alliance for Children's Rights appeared on behalf of the claimant Kelli W. Pamela W., the claimant's mother was also present at the hearing.

The record was held open for submission of written closing argument and for submission of the claimant's October 2006 Individual Education Plan which was received into evidence. The record was closed and the matter was submitted on December 11, 2006.

ISSUE PRESENTED

Has the Inland Regional Center appropriately assessed the claimant's level of care needs at the level III category and if not what level is appropriate?

FACTUAL FINDINGS

1. Claimant Kelli W. (Kelli) is an 11-year-old child who receives services from the Inland Regional Center (the service agency). Kelli is eligible for regional center services due to a diagnosis of mild mental retardation and she receives services from the service agency on that basis. Kelli also has a diagnosis of fetal alcohol syndrome, attention deficit disorder, intermittent explosive disorder and oppositional defiant disorder. She also has had some additional medical complications. Kelli is relatively high functioning and does very well with her daily living skills.

2. The claimant was adopted by her mother, Pamela W. Kelli went to live with her adopted family when she was just one month old. The family has three other adopted children and one adult son that are not clients of the regional center. Kelli's mother is clearly an extremely loving and dedicated parent who has willingly taken on the very difficult task of caring for Kelli while also raising the rest of her children.

3. The regional center provides respite services to Kelli's family. The family currently receives 32 hours per month of respite. The family has hired a family member as the respite provider. The family also receives behavioral modification training in the home for Kelli and the family.

4. The family also receives assistance through a federally funded state adoption subsidy program known as the Adoption Assistance Program (AAP) set forth in Welfare and Institutions Code section 16115.5 et seq. This program provides financial assistance to families who adopt special needs children. The purpose of the AAP assistance is to remove financial barriers to the adoption of children who might not otherwise be adopted. Counties providing adoption services determine eligibility for participation in the AAP program. The regional center is then the agency that is required to determine what level of service a client is given for purposes of AAP benefits. The level of service determination for a child who is a client of the regional center is determined by the regional service. The level of service is based on a determination by the service agency of what service would be required for the consumer if that consumer were placed into a residential facility licensed by the state and vendored by a regional center to serve the developmentally disabled. The level of service refers to the rate of reimbursement given to a residential home under a rate schedule established by the Department of Developmental Services. When the child is cared for at home rather than in a facility, the assigned level of service rate is then funded and paid to the adopted parents as AAP benefits.

5. When Kelli's adoption was finalized, Kelli was initially assigned a level IV level of service for purposes of AAP benefits. This level of service was assigned based on an assessment after observation of Kelli and parent and teacher input. The level of service determination is re-evaluated every two years. In 2003, the regional center made the bi-annual re-assessment of the level of service for Kelli. At that time, the regional center determined Kelli's condition had improved and her needs had changed so she was assigned a level II/III level of service. The re-assessment was based on observation of Kelli and a review of numerous reports regarding Kelli's improvement in activities of daily living and behavior.

6. In early 2004, the claimant's mother filed a fair hearing request to appeal Kelli's new level of service designation. After a hearing on the matter, a Decision was issued on April 14, 2004 (2004 Decision) in case number L2004020246. The 2004 Decision denied the claimant's request to re-designate her level of service as level IV. The 2004 Decision also upheld the service agency's decision to designate Kelli's level of service as level III. Kelli's family has continued to receive AAP benefits at the level III level of service designation since then.

7. In 2006, the regional center conducted its bi-annual review of Kelli's level of service needs. The regional center performed the re-assessment according to its standard process of reviewing the records, personally observing Kelli, and obtaining input from teachers and family. The regional center representatives interviewed the parents and teachers and specifically reviewed all available records including medical reports, behavioral reports, quarterly reports, educational reports, and Kelli's most recent IEP and IPP. The regional center's 2006 re-assessment of Kelli was performed properly and complied with the requirements of Title 22, California Code of Regulations, section 35333.

8. After completing the 2006 re-assessment, the regional center representatives concluded that the appropriate level of service need for Kelli is still level III. The review continued to demonstrate Kelli was generally doing very well in school and in her activities of daily living. She is in a special education program at school and she is able to participate in the structured setting of the classroom with just the help of the regular classroom staff. Like most children, Kelli has some good days and some bad days in school. Most of the time, the staff is able to redirect Kelli if she exhibits difficult behavior. When Kelli cannot be redirected, it also works to ignore her bad behavior. Kelli's mother and teachers do report that Kelli has outbursts of very difficult behavior at times at school. Kelli has been known to lash out physically at school with other students for no apparent reason. Kelli's outbursts are unprovoked and unpredictable. She has not seriously injured anyone, but one student had to be seen by the school nurse after Kelli deliberately bent the child's finger backwards. Since the outbursts at school tend to happen during the less structured activities, the school has assigned extra supervision for Kelli whenever she is in such situations.

Kelli also exhibits difficult behavior at home at times, such as temper tantrums, property destruction, physical aggression, resistive behavior, and inappropriate sexual activity in front of others. The behavioral issues at home are being addressed through in-

home behavior modification services. After reviewing these facts about Kelli's behaviors, combined with all medical and behavioral reports, the service agency still concluded that there had not been a significant change in Kelli's needs and that Kelli's level III designation was still appropriate.

9. A level III designation is generally considered appropriate for a person who may be disruptive with outbursts and tantrums, but is generally able to be redirected by staff in the facility when such behavior is exhibited. A level IV designation is reserved for facilities that serve people who have very extreme behaviors that cause serious physical harm to others that require more than just first aid. Such individuals exhibit such extreme behaviors that they require much more than staff training or redirection. They include people with homicidal and suicidal tendencies and also generally have the need for intense full-time help with all of their daily needs.

10. After a thorough review of the parents' request and upon review of medical reports, behavior assessments, educational reports and reports from school personnel, the regional center has properly determined Kelli would be best served at a level III facility. The claimant's mother believes Kelli still needs a level IV designation due to Kelli's behavioral problems. However, the evidence established that the regional center properly evaluated Kelli's needs and properly determined that her needs would best be served with a level III designation.

LEGAL CONCLUSIONS

1. Under the Lanterman Act (Welf. & Inst. Code, § 4500 et. seq.), the State of California accepts responsibility for persons with developmental disabilities and provides treatment and habilitation services and supports. (Welf. & Inst. Code, § 4501.) The state agency charged with implementing the Lanterman Act is the Department of Developmental Services (hereinafter referred to as "DDS"). The Lanterman Act authorizes DDS to contract with regional centers to provide developmentally disabled individuals with the necessary access to the services and supports they need. (Welf. & Inst. Code, § 4620.) The services and supports provided by the regional center must be based upon the client's developmental needs and should reflect the client's wishes and preferences. (Welf. & Inst. Code, §§ 4646, 4646.5, subds. (a)(1), (2) and (4), 4512, subd. (b), and 4648, subd. (a)(6)(E).)

2. When deciding an issue of services to be provided to a consumer, the service agency has a duty to provide services to a consumer that meet the consumer's needs and preferences while being a cost-effective use of public resources as well. (Welf. & Inst. Code, § 4646, subd. (a).) The service agency must also follow the intent of the Legislature as stated in Welfare and Institutions Code section 4646, subdivision (a) to provide services that take into account the needs and preferences of the consumer. The service agency is required to secure needed services and supports that will be effective in meeting the goals stated in the consumer's individual program plan. (Welf. & Inst. Code, §§ 4646, subd. (a) and 4648,

subd. (a)(1).) The claimant's needs are currently being met with the level of respite and the level III level of service designation, as set forth in Findings 2-10.

3. The regional center is identified in Title 22, California Code of Regulations, section 35333, subdivision (c) as the agency that determines the level of service requirement for a client of the regional center. The level of service determination for a client of the regional center is properly based on the service required for a client if he were placed into a residential facility. Title 22, California Code of Regulations, sections 56004 through 56013 set forth the criteria for the establishment of the rate for the facilities. The criteria include consideration of minimum staffing ratios required for each level of service, minimum consultation hours needed at each level, and the type of services needed at each level. Title 22, California Code of Regulations, section 35333, subdivision (b) sets forth how the service agency should go about assessing the claimant's needs in order to determine the appropriate level of service for the claimant. The service agency herein properly determined the appropriate level of service to be assigned to the claimant as level III for purposes of Adoption Assistance Program funding, as set forth in Findings 2-10.

ORDER

The service agency appropriately assessed the claimant's level of care needs at a level III category and that determination is hereby upheld.

NOTICE

This is the final administrative decision. Both parties are bound by this decision. Either party may appeal this decision to a court of competent jurisdiction within the State of California.

DATED: _____

GREER D. KNOFF
Administrative Law Judge
Office of Administrative Hearings